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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,360	05/11/2001	David Arthur Fell	16,925	1294

7590 05/21/2002

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EXAMINER

GRAYSON, ANGELA J

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 05/21/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,360

Applicant(s)

FELL ET AL.

Examiner

Angela J. Grayson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Application filed on 5-11-2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 31-37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18; 20-37 is/are allowed.
- 6) ☒ Claim(s) 1-3; 10; 12-15; 19 is/are rejected.
- 7) ☒ Claim(s) 4-10; 16-17 is/are objected to.
- 8) ☒ Claim(s) 1-37 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. During a telephone conversation with Mr. Thomas Connelly on 5-13-2002 a provisional election was made without traverse to prosecute the invention of an absorbent article, claims 1-30. Affirmation of this election must be made by applicant in replying to this Office action. Claims 31-37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-30, drawn to an absorbent article, classified in class 604, subclass 378.
 - II. Claim 31-37, drawn to a method of forming an absorbent core, classified in class 156, subclass 91. The inventions are distinct, each from the other because of the following reasons:
3. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make other and materially different product such as an absorbent article with substantially different basis weights and varying types of superabsorbent.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 10 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Regarding claims 10 and 19, the phrase "similar compositions" renders the claim indefinite because it is unclear what similar characteristics constitute the composition encompassed in the claimed invention. See MPEP § 2173.05(d).

Information Disclosure Statement

9. The information disclosure statement filed 5-11-2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,059,764 to Osborn.

12. As to claim 1, Osborn discloses an absorbent core for an absorbent article, the core comprising of a blend of fibers including a first group of short, high denier hydrophilic fibers, and a second group of longer, lower denier, moisture insensitive crimped synthetic fibers, the second group of fibers making up at least about 5% of the absorbent core, by weight, and the absorbent core being compressed in a substantially dry condition to a density of at least about 0.09 g/cm³. See Osborn column 23 line 52 through column 25 line 8; column 25 lines 48-50.

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13. As to claim 2, Osborn discloses an absorbent core for an absorbent article, the absorbent core comprising first and second absorbent layers each comprising a blend of fibers including a first group of short, high denier hydrophilic fibers, and a second group of longer, lower denier, moisture insensitive crimped synthetic fibers, the second group of fibers making up at least about 5% of each of the first and second absorbent layers, by weight, and each of the first and second absorbent layers being compressed in a substantially dry condition to a density of at least about 0.09 g/cm^3 . See Osborn column 23 line 52 through column 25 line 8; column 25 lines 48-50; column 26 lines 1-4.

14. Claims 3; 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4673402 to Weisman.

15. As to claim 3, Weisman discloses an absorbent article having a liquid permeable liner, a liquid-impermeable baffle, a first absorbent positioned between the liner and the baffle, the first absorbent being a stabilized material containing a superabsorbent, and having a predetermined basis weight, and a second absorbent positioned between the first absorbent and the baffle, the second absorbent being a stabilized material containing a superabsorbent, and having a basis weight which is at least equal to the basis weight of the first absorbent. See Weisman column 4 lines 8 through column 5 line 18; column 6 lines 33-35; column 8 lines 10-12; column 3 lines 36-50.

16. As to 12, Weisman discloses an absorbent article having a liquid permeable liner, a liquid impermeable baffle, the first absorbent positioned between the liner and the baffle, the first absorbent being a stabilized material containing a superabsorbent, and having a predetermined basis weight; and a second absorbent positioned between the

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first absorbent and the baffle, the second absorbent being a stabilized material containing a superabsorbent, and having a basis weight which is at least equal to the basis weight of the first absorbent, and the second absorbent having a smaller surface area than the first absorbent. See Weisman column 4 lines 8 through column 5 line 18; column 6 lines 33-35; column 8 lines 10-12; column 3 lines 36-50; column 8 lines 43-55.

17. As to 13, Weisman discloses an absorbent article as in claim 12, wherein the first absorbent has a shaped configuration. See Weisman column 6 lines 12-15.

18. As to claim 14, Weisman discloses an absorbent article as in claim 13 wherein the first absorbent has an asymmetrical configuration. *Id.*

19. As to claim 15, Weisman discloses an absorbent article as in claim 13 wherein the first absorbent has a dog bone shape. *Id.*

Allowable Subject Matter

19. Claims 4-10, 16-17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. Claims 18, 20-30 allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 5,562,645; 4,610,678; 5,486,167 are cited to indicate blended or layered absorbent structures. Any inquiry concerning this communication or earlier communications from the examiner should be directed to


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Angela J. Grayson whose telephone number is 703-305-1806. The examiner can normally be reached on Monday-Thursday from 9:30 am to 7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Angela J. Grayson, Esq.
May 16, 2002


Andy Falk
Primary Examiner